The Poor U. S. General Who Didn't Think Stalin Always Lied, Page 2

I. F. Stone's Weekly

VOL. 2, NUMBER 4 FEBRUARY 15, 1954 WASHINGTON, D. C. 15 CENTS

The Case of The California Bookie

Newspaper coverage of the Supreme Court's decision last week in *Irvine v. California* overlooked the disturbing light it sheds on two kinds of repressive legislation pending in Congress. These are the bills to authorize wire-tapping and to compel witnesses to give up their privilege against self-incrimination. Though wire-tapping is forbidden by the Federal Communications Act of 1934 and by Section 640 of the California Penal Code, in this case the law was circumvented by the use of other listening devices. A "bug" was installed near Irvine's phone and officers listened in from a garage half a block away as he made book on the horses. Justice Jackson for the majority expressed horror. "Science," he noted, "has perfected instruments of surveillance and invasion of privacy, whether by the policeman, the blackmailer or the busybody." But he held that this did not violate the law because "there was no interference with the communications system . . . no interception of any message."

The Act Says Nothing of 'Taps'

This does not necessarily follow from the words of the statute. The Communications Act says nothing about "interference." It does not use the term "wire-tapping." It forbids "interception," whether of telegraphic or telephonic communications. To say that interception is illegal only if the wire is actually tapped is to render the law futile at a time when there are new electronic devices for listening in without a direct physical tap.

Jackson as Attorney General was one of the first to allow the FBI to tap wires despite the law on the specious grounds that the words "intercept and divulge" permitted interception but not divulgence. As Supreme Court Justice, he has fathered a comparable sophistry. His words open the way for the first time to use of evidence obtained by these newer listening devices. Should wire-tapping be authorized by Congress under restrictions, the restrictions could be circumvented by using these alternative methods. Under Jackson's interpretation neither a Judge's order nor the Attorney General's approval would be required for the use of listening devices which do not physically "tap" the wire itself.

A Succession of Accidents

The Irvine decision shows how little reliance can be placed on such protective safeguards anyway. Another section of the California code makes it a crime for a police officer to use a listening device of any kind without the consent of the chief of police or the district attorney. During the oral argument, a question from Chief Justice Warren to the Assistant Attorney General of California elicited an admission that no such consent had been obtained in the Irvine case. Thus the Supreme Court in upholding the conviction not only allowed the police to circumvent Federal and State law against wire-tapping but to violate a State law restricting the use of other listening devices. Indeed the violation would never have come to light but for a succession of coincidences—a chance question from the bench in the final stage of the case, put by a Chief Justice who happened to be familiar with the law because he was once himself a California prosecutor.

The *Irvine* decision also throws light on pending "immunity" legislation. The penal code of California does not allow a witness to plead his privilege against self-incrimination if asked about gambling, but he cannot be prosecuted on the basis of his testimony. One of the questions put to the Supreme Court on appeal was "Whether a defendant may be tried and convicted in the State courts upon evidence obtained by compulsion of a Federal Statute, and thereafter introduced in evidence against an accused in the State court."

This was the background of the question. A 1951 Federal law makes it a crime to run a gambling business without reporting to the government and buying a Federal wagering tax stamp. Irvine made the disclosure and paid the tax. When the tax stamp was found in his home, it was entered in evidence against him. His lawyer protested that under such a system, "You confess or you go to Federal prison; having confessed you now go to State's prison."

A Spurious Immunity

The question put to the Court has wide ramifications. If pending immunity legislation is passed, will it confer immunity against State prosecution? A liberal or radical may be compelled to admit associations and activities which can be used for prosecution under State sedition or criminal syndicalism laws. The *Struik* and *Nelson* cases show how little beyond mere exercise of free speech may be enough for such prosecutions. The "immunity" conferred is then spurious.

The Court dodged the question in the *Irvine* case on the ground that it was raised too late in the proceedings. But Justice Black, with Douglas concurring, protested, "So far as this case is concerned it is enough for me that Irvine was convicted in a state court on a confession coerced by the Federal Government. I believe," he went on, "this frustrates a basic purpose of the Fifth Amendment—to free Americans from fear that federal power could be used to compel them to confess conduct or beliefs in order to take away their life, liberty or property."

Unfortunately this is a minority view. The State court in the *Irvine* case permitted his "confession" to be used against him despite the State immunity law as well as the Fifth Amendment! "Licensing such easy evasion of the Amendment," Justice Black said, "has proven a heavy drain on its vitality although no such debilitating interpretation was

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

given the Amendment by this Court until it decided *U. S. v. Murdock* in 1931, one hundred and forty years after the Bill of rights was adopted."

False Analogies and Fake Precedents

It would be hard to match the fallacious character of the analogy drawn by Justice Butler for the majority in the Murdock case. "The English rule of evidence against compulsory self-incrimination, on which historically that contained in the Fifth Amendment rests," Butler ruled, "does not protect witnesses against disclosing offenses in violation of the laws of another country." California or any other of the 47 States is hardly "another country." Two English cases were cited, with a great show of learning and authority, but neither covers the situation here and one *Queen v. Boyes*, (1 B. & S. 311) is not even in point, though our law books continue solemnly to cite it as if it were.*

Brownell Knows Better

This is nevertheless the law as it now stands. Yet Attorney General Brownell in his letter last week to the chairman of the House Judiciary Committee said the "immunity" legislation he favors "affords to a witness as broad a protection against prosecution as the constitutional privilege which he is required to surrender." This is untrue, except in the most disingenuous sense, as Brownell well knows. None of the pending "immunity" bills to compel witnesses to give up their privilege against self-incrimination would give them immunity from State prosecution. They would thus make a fundamental breach in the Fifth Amendment and facilitate political persecution. This is one of the warning signals for intellectuals to be read in this obscure case of a California bookie, in which lawlessness by law enforcement officials was given new encouragement by a majority of the U. S. Supreme Court.

*When I found the case, it turned out to involve a different question. A man accused of bribery in an English election declined to testify though granted a pardon in advance. He pleaded unsuccessfully that under the Act of Settlement, 12 & 13 W.3, he was still subject, despite that pardon, to possible impeachment by the House of Commons. This is a beautiful example of juristic flummery; the case does not cover the point for which Butler cited it, much less the real question before the Court.

Another of Those Holdovers

Justice Frankfurter ended his dissenting opinion in Irvine v. California with a quotation from an unexpected libertarian source.

"Our people," he quoted, "may tolerate many mistakes of both intent and performance, but with unerring instinct, they know that when any person is intentionally deprived of his constitutional rights those responsible have committed no ordinary offense. A crime of this nature, if subtly encouraged by failure to condemn and punish, certainly leads down the road to totalitarianism."

The quotation was from the September, 1952, issue of the FBI Law Enforcement Bulletin and the words were those of—guess who?—J. Edgar Hoover. We suggest a loyalty check.

The Poor U. S. General Who Didn't Think Stalin Always Lied

Washington—Under the engaging title, "Communist Infiltration in the Army", the McCarthy committee has just made public the transcript of the executive session at which Gen. Richard C. Partridge, G-2, U. S. Army, was interrogated last Fall about that Army pamphlet on Soviet Siberia.

Gen. Partridge seems to have rubbed McCarthy the wrong way from the start. The General said the pamphlet was designed to give as objective a picture as possible of how people in Soviet Siberia felt about the Communist regime and "not give the idea of the Communist government and the situation in Russia as seen from the United States."

McCarthy charged into the fray immediately. "Do you know," he asked, "that this book quotes verbatim from Joe Stalin, without attributing it to him, as a stamp of approval of the U. S. Army?" Gen Partridge said he didn't know that it did.

Instead of nailing the culprit by triumphantly producing the offending passage, McCarthy asked, "Don't you think before you testify you should take time to find out whether it quotes Joe Stalin and other notorious Communists?" The witness never got a chance to answer that question. McCarthy himself didn't seem to know just what had been quoted from Stalin and where.

For a Senator who aspires to be an unofficial Secretary of State, McCarthy is in need of briefing. His next question referred to "the Soviet embassy in Moscow." "If you were to learn," McCarthy asked Gen. Partridge, "that the book quotes from Mr. Simmons (Prof. Ernest J. Simmons of Columbia), without showing what part is from the work of Mr. Simmons; that Mr. Simmons wrote work under direct instructions of the Soviet Embassy in Moscow, would you still say it is an honest attempt to give an accruate picture of life in Communist Russia?"

Gen. Partridge insisted stubbornly, "It would all depend on what was said."

The General tried to explain that the main source of the information used in the pamphlet "were returned Japanese POW's." McCarthy didn't give him a chance. He wanted to know again, "Do you think books with authors such as Simmons, identified as a Communist taking orders from the Moscow Embassy when he wrote this, carrying articles by Corliss Lamont, Harriet Moore, Frederick Schuman, do you think that type of book should be used to indoctrinate our military?"

Gen. Partridge insisted that this was not an indoctrination pamphlet, and that McCarthy was talking about the books listed in the bibliography. McCarthy brushed the explanations aside. He wanted to know whether "a book like that should be withdrawn or used to indoctrinate our military." The General was trapped into heresy.

GEN. PARTRIDGE. I'd want to read the book first.

THE CHAIRMAN (McCarthy). Even though you know it is put out by Communist authors?

GEN. PARTRIDGE. It would all depend on what they say.

THE CHAIRMAN. You don't object to Communist authors unless you first see what they say, although he is writing books under the instructions of the Moscow Embassy. Is that correct?

The General was an intrepid fellow, and had led with his chin. McCarthy later in the hearing again brought up the same business about quoting Stalin verbatim, and wanted to know whether the writer of the pamphlet in quoting Stalin "was trying to give a correct picture."

"Whether he did," Gen. Partridge replied incautiously, "would depend on what he quoted. I don't think everything Stalin says is a lie. He is bound to say something true once in a while. I don't know what he quoted from Stalin."

A phone call to the Pentagon last week elicited the information that General Partridge was transferred out of G-2 shortly after the hearing and assigned in January to command the 43rd Infantry Division in Europe. The Siberian pamphlet was "declassified." But copies are no longer available. "It was sent back," the officer on press duty said obscurely. "Sent back where?" he was asked. "I have no idea," was the answer.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

I. F. Stone's Weekly

• ***Editor and Publisher***, **I. F. STONE**

Published weekly except the last two weeks of August at Room 205, 301 E. Capitol St., S.E., Washington 3, D. C. Subscription rates: Domestic, $5 a year; Canada, Mexico and elsewhere in the Western Hemisphere, $6; England and Continental Europe, $10 by 1st class mail, $15 by air; for Israel, Asia, Australia and Africa, $10 by first class mail, $20 by air mail. Single copy, 15 cents. Tel.: LI 4-7087. Entered as Second Class mail matter, Post Office, Washington, D. C.

February 15, 1954 **Vol. 2, No. 4**

BULLETINS

On Indo-China

"A severe winter, with destitute men, women and children frozen to death in Paris, has crystallized public opinion into a great outcry to end the colonial war in Indo-China. The press and everyone I have spoken to are indignant that the French government has spent seven billion dollars in fighting this war but has failed to build housing for the growing population of Paris." So wrote Henry Wales from Paris last Wednesday in that well-known Mid-Western organ of pacifism and radicalism, the *Chicago Tribune*.

Here in Washington, when three senior Southern Democrats with the committee positions and prestige of Senators Stennis (Miss.), Byrd (Va.) and George (Georgia) attack the Administration for sending air force mechanics to Indo-China, a major political battle is impending.

During the debate in the Senate last Tuesday, the two most important points made by the Democratic opposition went generally unreported. Stennis said there were Filipino, Korean and Japanese mechanics qualified to service these planes, that their use "was considered, but . . . for one reason or another, the idea was rejected and the plan to use U. S. Air Force mechanics was adopted." Stennis also said he had seen French mechanics repairing jet engines and jet planes at our bases in France and asked why they could not have been sent instead.

What the Democrats scent is a deliberate effort to involve the U. S., first through "token" forces of mechanics and then with troops. As to this, Mansfield (D. Mont.) who knows the Far Eastern situation intimately told the Senate the French and the Associated States already had 400,000 men as against Ho Chi-minh's 300,000. "What good would it do," Mansfield asked, "to send any more men from outside . . . when there is a superiority not only in manpower but in equipment as well?"

Eisenhower at press conference Wednesday and Wilson the day before expressed the views of top Administration officials fighting a rearguard action against pressure from the military for intervention. The China Lobby sees Indo-China as its opportunity and Admiral Radford, chairman of the Joint Chiefs of Staff, is ready with some of his favorite recipes including a blockade of the China coast, use of Chinese Nationalist forces in Indo-China and even active intervention by U. S. air and naval units. (Remember how it was said that air and naval support would be enough to end the Korean war?)

One little noticed remark by Wilson at his press conference may reflect an argument being used by the military to belittle the risk of Chinese intervention. The Secretary of Defense said the terrain and logistic situation was such that large-scale Chinese intervention was impossible. (This also recalls some other expert advice in Korea).

On Korea

As we go to press, General John Hull and Special Ambassador John Allison have just flown in from Korea. Neither State nor Pentagon would deny or confirm a story carried exclusively last week by the respected *Sunday Times* of London from its correspondent, Richard Hughes, in Tokyo saying that Hull and Allison were on their way back because Syngman Rhee threatens in April to seize that section of North Korea just above the 38th Parallel on the East coast which is under General Hull's administration. This area, with 65,000 people and some of the richest tungsten mines in the world, is under UN control. Rhee wants to take it over, and to take it over forcibly. It would give him a cheap and easy "march north" at UN expense.

Give Me Your Poor—But Only The Docile Ones

"I just do not agree with the idea that my country regardless of what is chiselled on the Lady that stands out in the Harbor in New York, wants to be given all the poor and downtrodden people of other countries. My people have been here a long time—nearly 300 years—and I do not think we are a catchall for everyone that wants to come here . . . On this wetback proposition, if you talk with a Texan, he had rather have a laborer from down in Mexico that has not been indoctrinated by communism and socialism—the kind that the Labor government sent over here from Mexico—he had rather have those which he can control and who are docile because they make better field hands."

—Congressman Cliff Clevenger, (R. Ohio), at page 192 House Appropriations Committee Hearings on the Justice Department Budget for 1954.

Personal Note: The E. and P. was being operated on for deafness this week-end. No interruption of publication is expected but should some complication force suspension for a week, all subscriptions will be automatically extended by one week, assuring 50 issues a year.

You'll Soon Be Dropped, If You Haven't Renewed

Some explanations are in order. To save money my whole name plate chain is being redone at once; that is why your expiration date has not yet changed even though you have renewed. The task of prodding renewals is terribly expensive; frankly it could have broken the *Weekly* financially and I am terribly grateful to our readers for having renewed in such volume and with so many gift subs without such prodding. There are still some laggards. If you are hard pressed for the moment and would like to have me wait, write and say so and I will keep you on the subscription rolls until you can renew. Otherwise I must now go ahead with the making of a new chain which means that I will soon have to drop those few who have not yet renewed. I hate to drop a reader. It's like losing a friend. So renew now if you can and if you can't drop me a line. But do it today. —I. F. STONE

P.S. I mailed out 5,000 sample copies of Vol II, No. 2, the special issue on the Eisenhower loss-of-citizenship proposal. There were some duplications between lists used and and my own. So if you got an extra copy, don't worry. Just pass it on.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

JENNINGS PERRY'S PAGE

Reds' Line (See FBI) Already Crowded with Patriots

In J. Edgar Hoover's latest fill in (to the House Appropriations Committee) on just what the rugged little band of Communists in our national bosom is up to now, maverick minds must find much for sprightly reflection. Mr. Hoover, it will be recalled, is the one for facts, leaving evaluations to his superiors—and naturally, since the facts are given out, to the public generally. The news, as passed to the congressmen, is (a) that the party has gone deeper underground and (b) that from deeper underground its principal goals are as follows: settlement of the Korean war and the return home of our troops, a big power peace pact including Red China, and U. S. trade with the Iron Curtain countries. Also repeal of the Smith Act, the Taft-Hartley law and the Internal Security Act of 1950.

The very principal goal of the party, it must be assumed, still would be the overthrow of our government by force and violence, or at least by subversion; though apparently Mr. Hoover felt it unnecessary to bring that up again. And the estimate that remains to be made, now that Congress and the common intelligence have freshly been posted, is of the practical relation of the party's program not only to its own horrible ultimate aim but to the purposes of other—unproscribed—groups of unquestionable loyalty.

The Republican party, for instance, or at any rate a faction of it far more numerous than all the evanescent Reds and their fellow travellers together, is no less passionately for a settlement in Korea, and for "bringing the boys home," two divisions at a time, as fast as possible. Its spokesmen point proudly, and with reason, to the cease-fire as the greatest accomplishment of the Eisenhower administration to date. The administration is moving—ponderously but as fast as it dares—to end the antic pretense that the government of 600 million Chinese does not exist. And American business increasingly chafes under strategic trade restrictions the businessmen of allied Free World nations already impatiently are breaking through.

In whatever crevices into which they may have disappeared the Communists cannot be more against Taft-Hartley than the great, respectable and ostentatiously anti-Communist labor organizations, nor more against the holier-than-thou sedition laws than are Harry S. Truman, the primitive democrats and the Methodist church. The question follows of how the Communist program on which Mr. Hoover has given us the low-down can even maintain an identity in all of this concurrence? And room can be made for consideration of the charming possibility that the party itself has not been able to resist ideological assimilation in the Melting Pot.

The FBI chief's unadorned facts are—interesting—and in the broad picture insignificant. The dutiful but congenitally judicious citizen well may be graced for failing to draw from them whether he should be alarmed anew or whether indeed his mind should be eased. The Communists want us out of Korea, but Sen. Vorys (R. Ohio) insists the Democrats put us into war there to heal American "joblessness." Are the Communists (and Sen. Vorys!) trying to wreck the economy by getting the war called off?—or to help stabilize it, Republican fashion, "without war?" The judicious citizen hardly need lose sleep over it either way.

As for the party's retreat deeper underground, it is equally difficult to tell whether or not this is an eventuation of which Mr. Hoover—if he should let slip an evaluation—would approve. The effect of the new laws and their enforcement (with the aid of the VFW) is to drive the party into further hiding; but the deeper hid the more difficult the enforcement of the laws. Even now, Mr. Hoover reports (complains?) the members have discarded cards, avoid meetings and shun use of the telegraph and telephone . . .

And here is the one part of the report that beyond doubt is cheerful. For if the party has given up the telephone, the only prop is out from under the commonly abominated wire-tap bill which Mr. Hoover, and his boss Mr. Brownell, have up to now been pushing.

Copies of the Special Issue on Ike's Deprivation-of-Citizenship Bill Still Available

This Is Expiration Time

PLEASE RENEW NOW

I. F. Stone's Weekly, 301 E. Capitol, Wash. 3, D. C.

Please renew (or enter) my sub for the enclosed $5:

Name _____

Street _____

City _____ Zone _____ State _____

Enter this gift sub for $4 more (money enclosed):

(To) Name _____

Street _____

City _____ Zone _____ State _____

2-15-54

I. F. Stone's Weekly

Room 205

301 E. Capitol St., S.E.

Washington 3, D. C.

NEWSPAPER

Entered as Second Class Mail Matter Washington, D. C. Post Office

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED